

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Richard W. McDonald

And in Re:

CASE NO. 04-50799

Diane M. McDonald

Debtors.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: The Debtors, Richard W. McDonald and Diane M. McDonald, Debtors' Attorney, John F. Hedtke, Trustee, Robert R. Kanuit, U.S. Trustee and other interested parties as shown on the attached service list.

1. Green Tree Loan Company f/k/a Conseco Finance Loan Company a/f/k/a Conseco Bank, Inc. (hereinafter "Green Tree "), by its undersigned attorney, moves the court for the relief requested below and gives notice of hearing herewith.

2. The court will hold a hearing on this motion on the 8th day of September 2004 at 1:30 p.m. or as soon thereafter as counsel can be heard, before the Honorable Gregory F. Kishel in Courtroom No. 2 at the U.S. Bankruptcy Court, 515 W. 1st St., Duluth, MN 55802.

3. Any response to this motion must be filed and delivered not later than 2nd day of September 2004, which is three (3) days before the time set for the hearing or filed and served by mail not later than the 27th day of August 2004, which is seven (7) days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sections 157 and 1334, Fe. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The Petition commencing this case was filed on July 13, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. 362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief with respect to property subject to Green Tree 's valid security interest.

6. The Movant hereby requests that the Court waive the ten-day stay period provided for by Bankruptcy Rule 4001(a)(3).

7. That Green Tree is entitled to lift the stay and seek the immediate possession of certain personal property that is described as follows:

1997, Friendship 16' x 70' manufactured home, American Classic model, serial number MY9717553V, including but not limited to a stove, refrigerator, washer, dryer, air conditioner, dishwasher, deck, shed, steps, gutters and skirt.

8. That cause exists, including lack of adequate protection of the interest of Green Tree in the subject property, entitling Green Tree to relief from stay.

9. That the Debtors effectively have no equity in the property and the property is not necessary to an effective reorganization.

10. Green Tree desires to protect its interest in the aforementioned property and requests the court to vacate the stay of actions and allow repossession pursuant to Minnesota Statutes.

11. The Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Green Tree, by its undersigned attorney, moves the court for an order for judgment that the automatic stay provided by 11 U.S.C. Sec. 362(a) be terminated so to permit the movant to enforce its interest in the mobile home under applicable Minnesota law and for such other relief as may be just and equitable.

Dated this 17th day of August 2004.

STEPHENSON & SANFORD PLC

By: /e/ Theresa A. Hodnett
Theresa A. Hodnett (026832X)
Attorneys for Secured Creditor
Suite 220
1905 East Wayzata Blvd.
Wayzata, MN 55391
(952) 404-2100

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Richard W. McDonald

And in Re:

CASE NO. 04-50799

Diane M. McDonald

Debtors.

**MEMORANDUM IN SUPPORT OF MOTION
FOR RELIEF FROM AUTOMATIC STAY**

FACTS

On or about December 15, 1999, the Debtors, Richard W. McDonald and Diane M. McDonald, executed a Manufactured Home Retail Installment Contract and Security Agreement with Conseco Bank, Inc. for the purchase of a 1997, Friendship 16' x 70' manufactured home, American Classic model, serial number MY9717553V, including but not limited to a stove, refrigerator, washer, dryer, air conditioner, dishwasher, deck, shed, steps, gutters and skirt. The Seller's interest in the above-described contract was assigned to the movant, Green Tree Loan Company f/k/a Conseco Finance Loan Company a/f/k/a Conseco Bank, Inc. ("Green Tree "). The contract provides that the failure to remit the monthly payment is a condition of default, the occurrence of which gives Green Tree the right to accelerate the contract and repossess the property.

On or about July 13, 2004, Debtors filed for relief under Chapter 7 of Title 11, U.S. Code. Debtors are currently in default for the monthly payments for May (\$490.46), June (\$490.46) and July (\$490.46) 2004 plus \$325.26 in insurance charges and \$147.12 in late charges. The total default under the contract is \$1,943.76. Debtors have failed to reaffirm the debt. The market value of the mobile home is approximately \$20,500.00. Currently, a net balance due of \$48,314.30 under the contract.

LAW

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. SECTION 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

On request of a party in interest and after notice and hearing the court shall grant relief from the stay for cause, including the lack of adequate protection of an interest in the property of such party in interest. 11 U.S.C. 362(d)(1). Pursuant to 11 U.S.C. Section 362(g) the burden is on the Debtors to prove the absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where:

1. Debtors filed Chapter 7 Bankruptcy on or about July 13, 2004.
2. The Debtors are delinquent for monthly contract installment payments for the months of May (\$490.46), June (\$490.46) and July (\$490.46) 2004 plus \$325.26 in insurance charges and \$147.12 in late charges and \$147.12 in late charges totaling \$1,943.76.
3. The Debtors have failed to reaffirm the debt with Green Tree.
4. The mobile home continues to depreciate in value.
5. The Debtors have failed to make any offer of adequate protection.

Accordingly, Green Tree is entitled to relief from the stay by reason of lack of adequate protection of its interest in the mobile home.

II. THE AUTOMATIC STAY SHOULD BE MODIFIED PURSUANT TO 11 U.S.C. SECTION 362(d)(2) WHERE (1) THE DEBTORS DO NOT HAVE ANY EQUITY IN THE PROPERTY, AND (2) THE PROPERTY IS NOT NECESSARY TO AN EFFECTIVE REORGANIZATION.

The first requirement under Section 362(d)(2) is met where the total of all the encumbrances against the property is in excess of the value of the property. The current NADA valuation of the property is approximately \$20,500.00. It is subject to Secured Creditor's interest in the gross amount of \$121,634.08 and a net amount of \$48,314.30. Effective reorganization is not at issue in this chapter seven case.

CONCLUSION

The Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. Section 362(d)(1) for cause, and where its interest in the secured property is not adequately protected. The Secured Creditor is also entitled to relief from the automatic stay pursuant to 11 U.S.C. Section 362(d)(2) where the Debtors have no equity in the property, and where the property is not necessary to an effective reorganization.

The Secured Creditor has met its burden as discussed above and respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 17th day of August 2004.

STEPHENSON & SANFORD PLC

By: /e/ Theresa A. Hodnett
Theresa A. Hodnett (026832X)
Attorneys for Secured Creditor
Suite 220
1905 East Wayzata Blvd.
Wayzata, MN 55391
(952) 404-2100

VERIFICATION

I, Tina Gaikowski, the Bankruptcy Administrator of Green Tree Loan Company named in the foregoing notice of hearing and motion, declare under penalty of perjury the that foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: 8-12-04

Signed: _____



Tina Gaikowski

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Richard W. McDonald

And in Re:

CASE NO. 04-50799

Diane M. McDonald

Debtors.

AFFIDAVIT OF TINA GAIKOWSKI

Tina Gaikowski, being first duly sworn on oath deposes and states:

1. That Affiant is the Bankruptcy Administrator for Green Tree Loan Company f/k/a Conseco Finance Loan Company a/f/k/a Conseco Bank, Inc. ("Green Tree ").
2. That Affiant has reviewed the account records relating to Richard W. McDonald and Diane M. McDonald and the Manufactured Home Retail Installment Contract and Security Agreement loan account.
3. That on or about December 15, 1999, the Debtors executed a Manufactured Home Retail Installment Contract and Security Agreement with Conseco Bank, Inc. for a 1997, Friendship 16' x 70' manufactured home, American Classic model, serial number MY9717553V, including but not limited to a stove, refrigerator, washer, dryer, air conditioner, dishwasher, deck, shed, steps, gutters and skirt, which is attached hereto as **Exhibit A**.
4. That Green Tree properly perfected its security interest in the Collateral. A true and correct copy of the Confirmation of Lien Perfection is attached hereto as **Exhibit B**.
5. That said Manufactured Home Retail Installment Contract and Security Agreement provides that failure to remit the monthly payment is a condition of default, the occurrence of which gives Green Tree the right to accelerate the contract and repossess the property.
6. That Debtors failed to maintain monthly payments under said contract.
7. That the Debtors defaulted by virtue of their failure to remit the monthly payments for May (\$490.46), June (\$490.46) and July (\$490.46) 2004 plus \$325.26 in insurance charges and \$147.12 in late charges. The total default is \$1,943.76.

8. That cause exists, including lack of adequate protection, as evidenced by the payment default, of the interest of Green Tree in the subject property, entitling Green Tree to relief from stay from Debtors.

9. That the current NADA market value of said collateral is \$20,500.00

10. That the net balance due to Green Tree is of \$48,314.30 as of August 10, 2004.

11. That the last known address of Debtors is as follows:

223 NE 9th Street, Grand Rapids, MN 55744.

12. That Green Tree believed and still believes that the aforementioned address was and still is the present residence of Debtors because Debtors had previously advised Green Tree of the same and because Green Tree has communicated with them at said address and has no reason to believe they no longer reside there.

13. That Debtors have no equity in the property.

14. Green Tree desires to protect its interest in the aforementioned property and requests the court to vacate the stay of actions and allow repossession pursuant to Minnesota Statutes.

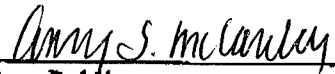
15. The Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

16. This affidavit is given in support of the motion of Green Tree, for relief from the automatic stay.

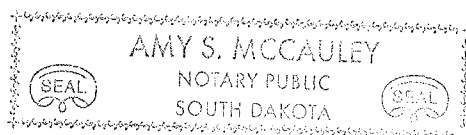


Tina Gaikowski

Subscribed and sworn to before me
this 12th day of August 2004.



Notary Public



MANUFACTURED HOME PROMISSORY NOTE, SECURITY AGREEMENT AND DISCLOSURE STATEMENT (CONV. - FHA - VA) (SI)

Date

12/15/99

MAKER: MCDONALD, DIANE M., 3500 COUNTY RD. GRAND RAPIDS, MN 55744

MAKER: MCDONALD, RICHARD W., 3500 COUNTY RD. GRAND RAPIDS, MN 55744

CREDITOR: Consec Bank, Inc. 2825 E. Cottonwood Parkway, Suite 230, Salt Lake City, UT 84121

FEDERAL TRUTH-IN-LENDING ACT DISCLOSURES

ANNUAL PERCENTAGE RATE (The cost of my credit as a yearly rate.)	FINANCE CHARGE (The dollar amount the credit will cost me.)	Amount Financed (The amount of credit provided to me or on my behalf.)	Total of Payments (The amount I will have paid after I have made all payments as scheduled.)	Total Sale Price (The total cost of my purchase on credit, including my down payment of)
13.58 %	\$ 105284.34	\$ 41853.66	\$ 147138.00	\$ 147138.00

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
300	490.46	Monthly beginning 30-45 days from the date of the disbursement.

SECURITY: I am giving a security interest in:

☒ The goods or property being financed. N/A Real property located at N/A
 LATE CHARGE: If a payment is more than 10 days late, I will be charged 10% of the scheduled installment amount.

PREPAYMENT: If I pay off early, I ☒ may N/A will not be charged a prepayment penalty.

ASSUMPTION: Someone buying my home may, subject to conditions, be allowed to assume the remainder of my obligation on the original terms.

See the Contract document below for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

ITEMIZATION OF THE AMOUNT FINANCED

- Amount Given To Me Directly..... \$ 9927.57
Name of Previous Creditor: _____
- Amounts Paid To Others On My Behalf:
 - Paid to Public Officials..... + \$ 5.50
 - Paid to Insurance Companies..... + \$ 2846.16
 - Paid to Appraiser..... + \$ 185.00
 - Paid to CONSECO FOR POINTS..... + \$ 2942.70
 - Paid to GREENPOINT..... + \$ 26111.28
 - Paid to GMAC..... + \$ 2963.15
 - Paid to..... + \$.00
 - Paid to..... + \$.00
 - Paid to..... + \$.00
 - Paid to..... + \$.00
 - Paid to..... + \$.00
- Principal Balance (1 + 2a.-k.)..... \$ 44981.36
- Prepaid Finance Charges..... \$ 3127.70
TOTAL PREPAID FINANCE CHARGES..... \$.00
..... \$.00
..... \$.00
- Amount Financed (3 - 4)..... \$ 41853.66

PHYSICAL DAMAGE INSURANCE

Physical Damage Insurance is required but I may obtain it from anyone I want that is acceptable to you. If I get the insurance checked below from you or through you, I will pay you

\$.00 for insurance protection for a term of 00 years.N/A Comprehensive (\$.00 deductible)N/A FloodN/A LiabilityN/A OtherN/A Vendor's Single Interest

OPTIONAL CREDIT LIFE AND DISABILITY INSURANCE

Credit Life and Disability Insurance are not required to obtain credit and will not be provided unless I sign and agree to pay the additional cost.

The term of this insurance is 5 years.N/A Single Credit Life Insurance \$.00☒ Joint Credit Life Insurance \$ 2846.16N/A Single Credit Disability Insurance \$.00

Total \$ 2846.16

☒ Signature of Maker(s) Insured

Date

CONTRACT AND SECURITY AGREEMENT

1. DEFINITIONS: "I", "me", "my" means the Maker(s). "You", "your" means the Creditor. "Manufactured Home" means the manufactured home; the real property described above, if applicable; and any other property described on page 2. "Agreement" or "Contract" means this Promissory Note, Security Agreement and Disclosure Statement; and a mortgage or deed of trust, if applicable.

EXHIBIT

A

tabbles

Manufactured Home				
NEW OR USED	YEAR AND MAKE	MODEL	SERIAL NUMBER	SIZE
U	1997 FRIENDSHIP	AMERICAN CLASS	HY9717553V	16 X 70
<input checked="" type="checkbox"/> Stove <input checked="" type="checkbox"/> Refrigerator <input checked="" type="checkbox"/> Washer <input checked="" type="checkbox"/> Dryer <input checked="" type="checkbox"/> Air Conditioner <input checked="" type="checkbox"/> N/A Wheels/Axles				
Other (Describe)	DW, DCK, SHD, STPS, GTRS, SKIRT			

2. PURCHASE: The Manufactured Home is located at the following address: 3500 COUNTY RD, GRAND RAPIDS, MN 55744
 The land on which the Manufactured Home is located is owned by: THIRD PARTY

3. PROMISE TO PAY: To repay my loan, I promise to pay you 44981.36 (the "Principal Balance") as listed under "Itemization of the Amount Financed" on page 1, plus interest from the date of the disbursement at the rate of 12.50%

per annum until paid in full by making the "Total of Payments" in accordance with the "Payment Schedule" on page 1.

4. LATE CHARGE: If a payment is made more than 10 days after it is due, I agree to pay a late charge of 10% of the scheduled installment amount.

5. NSF FEE: If any instrument which I submit to you is returned unpaid for any reason, I will pay you a fee of \$ 25.00

6. SIMPLE INTEREST CONTRACT: This is a simple interest contract. Interest will accrue upon the unpaid principal balance outstanding from time to time. The Finance Charge, Total of Payments and Payment Schedule were computed based on the assumption that payment will be made on the dates scheduled for payment. Early payments will reduce my final payment. Late payments will increase my final payment. My final payment will be equal to all unpaid sums due under this Agreement. My promise requires me to pay the final payment on the date due even if the amount of the final payment differs from the amount of the final payment disclosed.

7. SECURITY INTEREST: I give you a security interest under the applicable certificate of title law or Uniform Commercial Code in the Manufactured Home and any property added or attached to it, to secure my obligation under this Contract. I also grant you a security interest in any interest I may have in premium refunds or proceeds under any insurance covering the Manufactured Home. I agree to execute any application for certificate of title or ownership, financing statement or other document necessary to perfect your security interest in the Manufactured Home. To the extent, if any, that any Contract (whether or not accompanied by any one or more original) constitutes chattel paper (as such term is defined in the Uniform Commercial Code in effect in the applicable jurisdiction) no security interest in any Contract may be created in any document(s) other than the original.

8. PREPAYMENT: I may prepay this note in part or in full at anytime. I will not pay a penalty upon prepayment unless otherwise stated in the next sentence. If I prepay in full within 60 months of the date of this note, I will pay you a penalty of six months interest on the amount in excess of 20% of the original principal amount.

Partial prepayments will not excuse or reduce any later scheduled payment until this note is paid in full.

9. NO WARRANTIES: I agree that there are no warranties of any type covering the Manufactured Home. I am buying the Manufactured Home AS IS and WITH ALL FAULTS and THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE MANUFACTURED HOME IS WITH ME. I agree that any implied warranty of merchantability and any implied warranty of fitness for a particular purpose are specifically excluded and do not cover the Manufactured Home. This No Warranties provision does not apply to the extent that any law prohibits it and it does not cover any separate written warranties.

10. PROTECTION OF THE MANUFACTURED HOME: I will: (a) keep the Manufactured Home in good condition and not commit waste; (b) pay all taxes, charges and lot rent due for the Manufactured Home and the real estate it is located on; (c) not move, use illegally, sell, lease or otherwise transfer the Manufactured Home; (d) not attach the Manufactured Home to any real estate and the Manufactured Home will always be treated as personal property unless you consent in writing and state law permits such contrary treatment; and (e) not let anybody else have any interest in the Manufactured Home.

11. PERSONAL PROPERTY: I agree that regardless of how my Manufactured Home is attached to the real property and regardless of how your security interest in my Manufactured Home is perfected and regardless of whether an affidavit of affixture (or other similar instrument identifying the property as a fixture) has been recorded, my Manufactured Home is and shall remain personal property and is not and shall not become a fixture or part of the real property unless you consent in writing and state law permits a contrary classification. I agree to pay any and all personal property taxes assessed against my Manufactured Home and agree that failure to pay such taxes shall constitute a default under paragraph 17 on page 3.

12. **INSURANCE:** I will keep the Manufactured Home insured against such risks and in such amounts as you may reasonably require with an insurance company satisfactory to you. I will arrange for you to be named as loss payee on the policy. I agree to provide you written evidence of insurance as requested by you from time to time. If you finance the purchase of any such insurance for me, I will repay you for the cost of that insurance, plus interest up to the contract rate of interest. I authorize you to furnish account data to a licensed insurance agent of your choice so such agent may solicit the purchase of credit, property, warranty or other insurance from me. I agree that the insurance company may make any payments due under the policy directly to you, and I direct the insurance company to do so. You may do whatever you think is necessary to be sure that any proceeds of the insurance will be used to repair the Manufactured Home or pay off this Contract. I give you a power of attorney (which I cannot cancel) so that you may do whatever you need to in order to collect the insurance proceeds. If I fail to obtain, maintain or pay for the required insurance, or if I fail to arrange for required to purchase such insurance. If you purchase such insurance, I will immediately repay you for any amounts you spend in purchasing the insurance, plus interest up to the contract rate of interest or, at your option, pay you over time as a workout of the obligation. If I owe you for any insurance (or for late charges, attorney fees or collection costs), I understand that I owe an additional sum for these debts beyond my monthly principal and interest payment. My monthly payment will therefore be greater than that stated on page 1 until such additional debts are paid in full.

13. **COLLATERAL PROTECTION INSURANCE:** I am giving you a security interest in property to secure this loan. I understand that I must keep this property insured against loss, expense or damage due to fire, theft, collision or other such risks in the amounts you require. Unless I provide evidence of the insurance coverage required by my agreement with you, you may purchase insurance at my expense to protect your interests in my collateral. This insurance may, but need not, protect my interests. The coverage that you purchase may not pay any claim that I make or any claim that is made against me in connection with the collateral. I may later cancel any insurance purchased by you, but only after providing evidence that I have obtained insurance as required by our agreement. If you purchase insurance for the collateral, I will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges you may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to my total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance I may be able to obtain on my own.

14. **CHARGES; LIENS:** I shall pay all taxes, assessments and other charges, fines and impositions attributable to the Manufactured Home which may attain a priority under this Agreement. I shall promptly furnish to you all notices of amounts due under this paragraph and, if I make payments on any such amounts directly, I shall promptly furnish to you receipts evidencing such payments. I shall promptly discharge any lien which has priority over this Agreement provided that I shall not be required to discharge any such lien so long as I shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to you or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Manufactured Home or any part thereof.

15. **INSPECTION:** You may make, or cause to be made, reasonable entries upon and inspections of the Manufactured Home, provided that you shall give me notice prior to any such inspection specifying reasonable cause therefor related to your interest in the Manufactured Home.

16. **FORBEARANCE BY CREDITOR NOT A WAIVER:** Any forbearance by you in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by you shall not be a waiver of your right to accelerate the maturity of this indebtedness secured by this contract and declare a default herein.

17. **DEFAULT:** I will be in default if: (i) I do not make a payment on time; or (ii) I do not keep any of my other promises under this Contract; or (iii) I file a case, or someone else files a case against me, under the United States Bankruptcy Code; or (iv) you feel in good faith that the Manufactured Home is in danger or that I will not be able to continue my payments. The default described under (iv) does not apply if this Contract is guaranteed by the Veteran's Administration. You will give me notice of the default except when I voluntarily surrender or abandon the Manufactured Home. I will have the right to cure the default during the notice period. If I do not cure the default, you may do either or both of the following: (a) **Acceleration:** You can require me to immediately pay you the entire remaining balance of this Contract; and/or (b) **Repossession:** You can repossess the Manufactured Home. Once you get possession of the Manufactured Home you may sell it. If the amount from the sale, after expenses, is less than what I owe you, I will pay you the difference. If there is any property left in the Manufactured Home when you repossess, you may dispose of it as provided by law. If I default, you can do whatever is necessary to correct my default. If you spend money to correct my default, I will pay you back immediately with interest at the contract rate of interest.

18. **NOTICE:** Except for any notice required under applicable law to be given in another manner, (a) any notice to me provided for in this Contract shall be given in writing by mailing such notice by certified mail, addressed to me at the Manufactured Home address or at such other address as I may designate by notice to you in writing, and (b) any notice to you shall be given in writing by certified mail, return receipt requested, to your address stated herein or to such other address as you may designate by notice to me in writing.

19. **ATTORNEY'S FEES:** If you hire an attorney who is not a salaried employee to collect what I owe under this Agreement or to get possession of the Manufactured Home or to enforce my agreements herein, I will pay your statutory attorney's fees plus court costs and out-of-pocket expenses, if allowed by law.

20. **TRANSFER OF PROPERTY; ASSUMPTION:** If all or any part of the Manufactured Home or interest therein is sold or otherwise transferred by me without your prior written consent, excluding the creation of a purchase money security interest for household appliances, you may, at your option, declare all the sums secured by this Contract to be immediately due and payable. If you exercise such option to accelerate, you shall mail to me thirty (30) days prior notice of acceleration in accordance with the notice provision herein. If I fail to pay such sums prior to the expiration of such period, you may, without further notice or demand on me, invoke any remedies permitted under law.

21. **MISCELLANEOUS PROVISIONS:** This written Contract is the only agreement that covers my loan. This Contract can only be modified or amended or provisions in it waived (given up) by a written modification to this Contract signed by you. You can decide not to use or enforce any of your rights under this Contract without losing them. For example, you can extend the time for making some payments without extending others. If any part of this Contract cannot be enforced because of a law which prohibits it, all other parts can still be enforced. I agree to cooperate with you regarding any requests after closing to correct errors made concerning this Agreement or the transaction and to provide any and all additional documentation deemed necessary by you to complete this transaction.

22. **ARBITRATION:** All disputes, claims, or controversies arising from or relating to this Agreement or the relationships which result from this Agreement, or the validity of this arbitration clause or the entire Agreement, shall be resolved by binding arbitration by one arbitrator selected by you with my consent. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act, Title 9 of the United States Code. Judgment upon the award rendered may be entered in any court having jurisdiction. The parties agree and understand that they choose arbitration instead of litigation to resolve disputes. The parties understand that they have a right or opportunity to litigate disputes in court, but that they prefer to resolve their disputes through arbitration, except as provided herein. **THE PARTIES VOLUNTARILY AND KNOWINGLY WAIVE ANY RIGHT THEY HAVE TO A JURY TRIAL, EITHER PURSUANT TO ARBITRATION UNDER THIS CLAUSE OR PURSUANT TO A COURT ACTION BY YOU (AS PROVIDED HEREIN).** The parties agree and understand that all disputes arising under case law, statutory law, and all other laws including, but not limited to, all contract, tort, and property disputes, will be subject to binding arbitration in accord with this agreement. I agree that I shall not have the right to participate as a representative or a member of any class of claimants pertaining to any claim arising from or relating to this Agreement. The parties agree and understand that the arbitrator shall have all powers provided by law and the Agreement. These powers shall include all legal and equitable remedies, including, but not limited to, money damages, declaratory relief, and injunctive relief. Notwithstanding anything hereunto the contrary, you retain an option to use judicial or non-judicial relief to enforce a security agreement relating to the collateral secured in a transaction underlying this arbitration agreement, to enforce the monetary obligation or to foreclose on the collateral. Such judicial relief would take the form of a lawsuit. The institution and maintenance of an action for judicial relief in a court to foreclose upon any collateral, to obtain a monetary judgment or to enforce the security agreement, shall not constitute a waiver of the right of any party to compel arbitration regarding any other dispute or remedy subject to arbitration in this Agreement, including the filing of a counterclaim in a suit brought by you pursuant to this provision.

23. **APPLICABLE LAW:** The interest to be charged on this loan is governed by the laws of the state of Utah and applicable federal law. All other terms of this transaction are governed by the law of the state of Minnesota.

24. **ADDITIONAL TERMS:** N/A

WARNING TO BORROWER: DEFAULT IN THE PAYMENT OF THIS LOAN AGREEMENT MAY RESULT IN THE LOSS OF THE PROPERTY SECURING THE LOAN. UNDER FEDERAL LAW YOU MAY HAVE THE RIGHT TO CANCEL THIS AGREEMENT. IF YOU HAVE THIS RIGHT, THE CREDITOR IS REQUIRED TO PROVIDE YOU WITH A SEPARATE WRITTEN NOTICE SPECIFYING THE CIRCUMSTANCES AND TIMES UNDER WHICH YOU CAN EXERCISE THIS RIGHT.

NOTICE TO MAKER(S): 1. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. 2. YOU ARE ENTITLED TO A COPY OF THIS CONTRACT.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

MAKER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS CONTRACT.

CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

Maker *Diane M. McDonald*
Signature DIANE M. MCDONALD

12-15-99
Date

Maker

Richard W. McDonald
Signature

RICHARD W. MCDONALD

12/15/99
Date

**U. S. Bank Trust
National Association**

Bankris Systems, Inc., St. Cloud, MN Form GT-MHPNLAZ-1 3/25/88

ORIGINAL

GT-10-00-201 (3/99) (page 4 of 4)

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST., ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

MCDONALD RICHARD WADE
MCDONALD DIANE MARIE
3500 CO RD 76 LOT 30
GRAND RAPIDS MN 55744

97 Year	FRIE Make	MH Model	K0680M325 Title NR.
MY9717553V VIN		12/20/99 Security Date	NO Rebuilt

RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.

1ST SECURED PARTY

LIEN HOLDER

CONSECO FINANCE
1400 TURBINE DR
RAPID CITY SD 57703-4719

First Class
U.S. Postage
PAID
Permit No. 171
St. Paul, MN

EXHIBIT

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tabbies

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Richard W. McDonald

And in Re:

CASE NO. 04-50799

Diane M. McDonald

Debtors.

UNSWORN DECLARATION FOR PROOF OF SERVICE

Andrew Brueggeman of Stephenson & Sanford, PLC, attorneys licensed to practice law in this court, with office address at Suite 220, 1905 East Wayzata Blvd., Wayzata, Minnesota, declares under penalty of perjury that on the 17th day of August 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief from Automatic Stay, Affidavit of Tina Gaikowski, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Wayzata, Minnesota addressed to each of them as follows:

Richard W. McDonald
223 NE 9th Street
Grand Rapids, MN 55744

Robert R. Kanuit
4815 W. Arrowhead Rd.. Ste 230
Hermantown, MN 55811

Diane M. McDonald
223 NE 9th Street
Grand Rapids, MN 55744

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

John F. Hedtke
1217 E. 1st St.
Duluth, MN 55805

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 17th day of August, 2004.

/e/ Andrew J. Brueggeman

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

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Debtors.

ORDER

The above entitled matter came on for hearing upon motion of Green Tree Loan Company f/k/a Conseco Finance Loan Company a/f/k/a Conseco Bank, Inc., pursuant to 11 U.S.C. Section 362 on the 8th day of September 2004, at the U.S. Bankruptcy Court, U.S. Courthouse Rm 2, 515 W. 1st St., Duluth, MN 55802. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Green Tree Loan Company f/k/a Conseco Finance Loan Company a/f/k/a Conseco Bank, Inc., its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. 362 with regard to that certain Manufactured Home Retail Installment Contract and Security Agreement dated December 15, 1999, executed by Debtors, Richard W. McDonald and Diane M. McDonald, covering a 1997, Friendship 16' x 70' manufactured home, American Classic model, serial number MY9717553V, including but not limited to a stove, refrigerator, washer, dryer, air conditioner, dishwasher, deck, shed, steps, gutters and skirt; and may proceed to foreclose said security interest in accordance with Minnesota law.

Notwithstanding Fed. R. Bankr. P. 4001 (a)(3), this order is effective immediately.

DATED: _____

BY THE COURT:

The Honorable Gregory F. Kishel
Judge of the U.S. Bankruptcy Court